

Political Subdivisions Interim Committee

Wednesday, October 17, 2007
9:00 a.m.
Room W130 House Building

ENCLOSURES

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Local Referenda Issues (*Agenda Item #5*)

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2007 MEETING DATES

Political Subdivisions Interim Committee

<u>Date</u>	<u>Time</u>	<u>Place</u>
Wednesday, April 18	9:00 a.m. - Noon	Room W130, West Office Bldg
Wednesday, May 16	9:00 a.m. - Noon	Room W130, West Office Bldg
Wednesday, June 20	9:00 a.m. - Noon	Room W130, West Office Bldg
Wednesday, July 18	9:00 a.m. - Noon	Room W130, West Office Bldg
No meeting in August		
Wednesday, September 19	9:00 a.m. - Noon	Room W130, West Office Bldg
Wednesday, October 17	9:00 a.m. - Noon	Room W130, West Office Bldg
Wednesday, November 14	9:00 a.m. - Noon	Room W130, West Office Bldg
No meeting in December. Time reserved for general session preparations.		

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NOTICE OF MEETING

POLITICAL SUBDIVISIONS INTERIM COMMITTEE

The committee chairs have scheduled the following meeting:

DATE: **Wednesday, October 17, 2007**
TIME: **9:00 a.m.**
PLACE: **Room W130 House Building**

If committee members would like to be excused from the meeting, they may call Joseph Wade or Wendy Bangerter at 538-1032.

COMMITTEE MEMBERS

Sen. Dennis E. Stowell, Senate Chair
Rep. Fred R Hunsaker, House Chair

Sen. Fred J. Fife
Sen. Sheldon Killpack
Sen. Michael G. Waddoups
Rep. Sheryl L. Allen
Rep. Tim M. Cosgrove

Rep. Bradley M. Daw
Rep. Gage Froerer
Rep. Kerry W. Gibson
Rep. Richard A. Greenwood
Rep. Christopher N. Herrod

Rep. Christine A. Johnson
Rep. Brad King
Rep. Jennifer M. Seelig
Rep. R. Curt Webb
Rep. Carl Wimmer

STAFF

Joseph Wade
Policy Analyst

Robert H. Rees
Associate General Counsel

Wendy L. Bangerter
Legislative Secretary

Prepared October 12, 2007

POLITICAL SUBDIVISIONS INTERIM COMMITTEE

2007 MEMBERSHIP LIST

Dennis E. Stowell (Senate Chair)	PO Box 796 Parowan, UT 84761	(H) 435 477-8143 (C) 435 559-8143 (F) 435 477-8111	dstowell@utahsenate.org
Rep. Fred R Hunsaker (House Chair)	1190 N 1700 E Logan, UT 84341	(H) 435 753-1850 (C) 435 757-0184	fhunsaker@utah.gov
Sen. Fred J. Fife III	842 W 900 S Salt Lake City, UT 84104	(H) 801 521-7383 (C) 801 680-4576 (O) 801 521-6440	(F) 801 521-6456 ffife@utahsenate.org ffifeiii@aol.com
Sen. Sheldon L. Killpack	3406 S 875 W Syracuse, UT 84075	(H) 801 773-5486	skillpack@utahsenate.org
Sen. Michael Waddoups	2868 W Matterhorn West Jordan, UT 84084	(H) 801 967-0225 (O) 801 355-1136	mwaddoups@utahsenate.org
Rep. Sheryl Allen	620 Larsen Dr. Bountiful, UT 84014	(H) 801 295-8576 (C) 801 402-5416	sherylallen@utah.gov
Rep. Tim M. Cosgrove	477 E. 6325 S Murray, UT 84107	(H) 801 685-0673 (C) 801 647-7048	cosgrove44@mstarmetro.net
Rep. Bradley M Daw	842 E 280 S Orem, UT 84097	(H) 801 226-5079	bdaw@utah.gov
Rep. Gage Froerer	P O Box 379 Huntsville, UT 84317	(H) 801 745-0505 (C) 801 391-4233 (O) 801 621-0505	(F) 801 621-0506 gfroerer@utah.gov
Rep. Kerry W. Gibson	5454 W 1150 S Ogden, UT 84404	(H) 801 731-8071 (O) 801 940-0475	(F) 801 731-8546 kwgibson@utah.gov
Rep. Richard A. Greenwood	3704 W 6050 S Roy, UT	(O) 801 940-7236 (C) 801 940-7236 (H) 801 985-3280	fxdwg_98@hotmail.com
Rep. Christopher N. Herrod	4125 Crestview Ave. Provo, UT 84604	(H) 801 375-9624	cherrod@utah.gov
Rep. Christine A Johnson	1336 E 900 S Salt Lake City, UT 84105-1618	(C) 801 661-3489	christinejohnson@utah.gov
Rep. Brad King	635 N 500 E Price, UT 84501	(H) 435 637-7955 (O) 435 613-5246	(F) 435 637-2433 brad.king@ceu.edu skhking@emerytelcom.net
Rep. R. Curt Webb	500 Hillsbrough Dr. Providence, UT 84332	(O) 435 753-2467 (H) 435 753-0215	(C) 435 770-9797 curt@cachetitle.com
Rep. Jennifer M Seelig	986 W Sterling Dr. Salt Lake City, UT 84116	(H) 801 519-2544 (O) 801 924-9892	jseelig@utah.gov
Rep. Carl Wimmer	5526 W 13400 S #217 Herriman, UT 84096	(C) 801 608-4763	cwimmer@utah.gov

COMMITTEE STAFF

Mr. Joseph Wade, jwade@utah.gov
Committee Staff Policy Analyst
Mr. Robert H. Rees, rrees@utah.gov
Committee Staff Attorney
Ms. Wendy L. Bangerter, wbangerter@utah.gov
Committee Secretary

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AGENDA

POLITICAL SUBDIVISIONS INTERIM COMMITTEE

UTAH LEGISLATURE

Wednesday, October 17, 2007 • 9:00 a.m. • Room W130 House Building

Approximate
Time Frame

9:00 1. Committee Business

- Call to order - Rep. Fred Hunsaker, House Chair
- Approval of the minutes of the September 19, 2007 meeting

2. Process for Incorporation of a Town

3. Public Water Protection

4. Follow-up on Local Government Campaign Financial Reports

5. Local Referenda Issues

6. Update on Special Districts Subcommittee

Noon 7. Other Items / Adjourn

**MINUTES OF THE
POLITICAL SUBDIVISIONS INTERIM COMMITTEE**
Wednesday, September 19, 2007 – 9:00 a.m. – W130 House Building

Members Present:

Sen. Dennis E. Stowell, Senate Chair
Rep. Fred R Hunsaker, House Chair
Sen. Fred J. Fife
Sen. Michael G. Waddoups
Rep. Sheryl L. Allen
Rep. Tim M. Cosgrove
Rep. Bradley M. Daw
Rep. Gage Froerer
Rep. Kerry W. Gibson
Rep. Richard A. Greenwood
Rep. Christopher N. Herrod
Rep. Christine A. Johnson
Rep. Brad King
Rep. Jennifer M. Seelig
Rep. R. Curt Webb
Rep. Carl Wimmer

Members Absent:

Sen. Sheldon Killpack

Staff Present:

Mr. Joseph Wade, Policy Analyst
Mr. Robert H. Rees, Associate General Counsel
Ms. Wendy L. Bangerter, Legislative Secretary

Note: A list of others present, a copy of related materials, and an audio recording of the meeting can be found at www.le.utah.gov.

1. Committee Business

Chair Stowell called the meeting to order at 9:10 a.m. He introduced a new committee member, Rep. Curt Webb, and welcomed him to the Committee.

MOTION: Rep. Allen moved to approve the minutes of the July 18, 2007 meeting. The motion passed unanimously.

2. Annual Report from Utah's Seven Associations of Governments

Mr. Roger Jones, Executive Director, Bear River AOG (Association of Governments) and the designated spokesperson for all seven AOGs, distributed a chart showing the seven associations' planning districts. He reviewed the history and origin of the AOGs, why they were created, and how they continue to function. He also reviewed budget information and encouraged the Legislature to consider funding the AOGs as they once did.

3. Implementation of H.B. 222, "Open and Public Meetings - Electronic Notice"

Ms. Patricia Smith-Mansfield, Director, Utah State Archives, gave an overview and progress report regarding H.B. 222, "Open and Public Meetings - Electronic Notice," passed in the 2007 General Session. The bill required the creation of a Utah Public Notice Website. She used a power point presentation to inform the Committee about the implementation of the website. She reviewed the responsibility it will be to administer the website.

Mr. Steve Fletcher, CIO/Executive Director, Department of Technology Services, updated the Committee on the technical status of the website project. He said they have set a target date of April 1, 2008 to be

ready for use. Ms. Smith-Mansfield stated that hiring and training of the administrator will begin by January 1, 2008.

Mr. Lincoln Shurtz, Utah League of Cities and Towns, explained concerns that he encouraged the Legislature to address in the upcoming General Session.

Mr. Joel Campbell, Utah Press Association, questioned a provision in the law regarding required notification of newspapers.

Ms. Bonnie Miller, Intermountain Commercial Record, expressed concern that this was to save the county money but she can see that it will not accomplish that.

Rep. Dougall clarified that another bill introduced in the last session was to save money, but the purpose of this bill is to increase accessed notification to the public.

4. Local Government Campaign Financial Reports

Rep. Bradley Daw, study sponsor, explained the points in 2008 General Session draft legislation, "Election Law - Financial Reporting." He explained the requirement for the county clerk to post campaign financial reports on the county's website or send them electronically to the Lt. Governor's office for imaging on his website. He said that campaign financial reports being placed on the Lt. Governor's website may not be searchable but will be stored in a repository making the reports more accessible to the public.

Mr. Michael Cragun, Director, Elections Office, Office of the Lt. Governor, expressed concern for the magnitude of what the bill would require of the Office of the Lt. Governor. He stated that their web system will have to be rewritten to match changes in the law. He also noted that a policy change is being made and will bring what is now a local function under the regulations of state government.

Mr. Lincoln Shurtz, Utah League of Cities and Towns, clarified that the intent was not uniformity, but to make information accessible in a centralized location.

Mr. Adam Trupp, Utah Association of Counties, echoed the concerns of Mr. Cragun for the added burdens being placed on counties. He agreed with setting a minimum standard.

Rep. Daw explained his intent that if a county posts a report on its own website, the county also needs to provide the state with an electronic link for the state website.

5. Other Items / Adjourn

MOTION: Rep. Johnson moved to adjourn the meeting. The motion passed unanimously. Rep. King was absent for the vote.

Chair Stowell adjourned the meeting at 10:55 a.m.

Local Referenda Issues

In the May meeting of the Political Subdivisions Interim Committee, Rep. Scott Wyatt explained the following five problems with the current local referenda statutes.

Wyatt's Objective: Clarify statute on some issues that have been disputed in the courts.

1. **Clarify When Passage (Define Passage)**
The statute requires a referendum be filed within 45 days of "passage." When is passage? Is passage the date the legislative body votes on the ordinance? Is passage when the Mayor signs the ordinance? Date posted? Effective date? Other?
2. **Due Process - Notice of Passage**
What happens if the ordinance that was passed by the legislative body was never posted (noticed) to the public? Does lack of notice affect the 45 day filing requirement?
3. **Ordinance vs. Resolution**
What is subject to referendum? Is a resolution subject to referendum? Typically, resolutions are non-binding. However, often general plans are adopted by resolution since they are non-binding (Note: zoning is binding). However, general plans have a tremendous impact on zoning decisions, so should a general plan decision be subject to referendum?
4. **Legislative Decision vs. Administrative Decision - Form of Municipal Government**
Legislative land use decisions are subject to referendum. Administrative land use decisions are not subject to referendum. Most municipalities have a form of municipal government in which the city council exercises both legislative and administrative powers. A recent Utah Supreme Court case declared that all decisions by the city council in a strong mayor form of government are legislative even though the content of the decision is really administrative in nature. The issue of which decisions are legislative and which decisions are administrative needs to be clarified. Issues subject to referendum should be content based and not dependent on the form of government.
5. **Conflict Between Statute and Constitution**
The Utah Constitution states that upon the filing of a referendum the ordinance does NOT take effect. However, state statute states that the ordinance DOES take effect.